

# EXHIBIT 3

TO PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL  
FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY  
JUDGMENT AGAINST DEFENDANT ERIC MONCADA

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<b>UNITED STATES COMMODITY FUTURES TRADING COMMISSION,</b>	)	Civil Action No. <u>12-cv-8791 (CM)</u>
	)	( <u>GWG</u> )
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>ERIC MONCADA; BES CAPITAL LLC; and SERDIKA LLC.</b>	)	
	)	
<b>Defendant(s).</b>	)	
	)	
	)	
	)	
	)	
	)	

**AFFIDAVIT OF JESSICA M. HARRIS**

I, Jessica M. Harris, affirm pursuant to 28 U.S.C. § 1746, as follows:

1. I am employed as a Futures Trading Investigator by the Division of Enforcement of the United States Commodity Futures Trading Commission (“Commission”), located at 1155 21<sup>st</sup> Street NW, Washington, DC 20581. I have held this position since September 2009. I have a Bachelor’s degree in business administration from Western Michigan University, and am currently earning a Master of Engineering degree from University of Virginia. As a Futures Trading Investigator, my responsibilities include the investigation of registered and unregistered commodity firms and individuals to ensure compliance with and enforcement of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2012), and the Commission Regulations (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2012 and 2013), promulgated thereunder. In connection with these responsibilities, I routinely analyze account documents, trading records

and bank records; conduct investigative interviews; and obtain sworn testimony. Moreover, I build statistical models, develop analytics, and data metrics for manipulation cases.

2. Immediately prior to my employment with the Commission, I was employed for more than three years with the National Futures Association (“NFA”), a self-regulatory organization for the U.S. futures industry, where my responsibilities included performing analysis, investigations of futures and forex member firms, and compliance and regulatory matters. At the NFA, I conducted routine and unannounced audits of member firms, reviewed financial statements to ensure integrity and conducted investigations to discover fraud and rule violations. Prior to my employment at the NFA, I was employed with MF Global Inc. for over one year, where my responsibilities included aiding in trade reconciliations and allocations among accounts and brokerage firms.

#### **I. Documents Reviewed**

3. For purposes of this affidavit, I reviewed the following documents received by the Commission in the course of its investigation of and litigation against Eric Moncada (“Moncada”), BES Capital LLC (“BES”), and Serdika LLC (“Serdika”).

4. I reviewed daily account statements produced to the Commission by Advantage Futures LLC (“Advantage”) for accounts held by Advantage for account A4858 in the name of Serdika (the “Serdika account”) and account A5187 in the name of BES (the “BES account”). I reviewed daily statements for the following dates: October 6, 12, 14, 19, 26, 27, 29, and 30, 2009 (the “attempted manipulation dates”). The daily account statements for the eight attempted manipulation dates are attached as Attachments “A” through “H”.

5. I reviewed spreadsheets produced to the Commission by the CME Group, Inc. (“CME Group”) of all activity on Globex, the CME’s electronic trading platform, in the December 2009

Wheat Futures Contract traded on Chicago Board of Trade (“CBOT”), as redacted by the Commission to anonymize account numbers, trader identifications, and clearing firm identifications for traders other than Moncada (the “Globex trade data”). For purposes of this affidavit, I reviewed Globex trade data for September 30, 2009 and October 6, 12, 14, 15, 19, 26, 27, 29, and 30 2009. Because the full data fill for each trading day exceeds one million lines of data, I am only attaching excerpts of that data that are relevant to the facts discussed in this affidavit. These excerpts include all new orders, canceled orders, and executed trades associated with Moncada’s trader identification number during the times identified. These excerpts are attached as Attachments “I” through “P”.

6. I reviewed redacted bank records produced by Eric Moncada for his personal checking account (collectively the “bank records”), covering the time period from October 1, 2008 to January 3, 2010. The bank records, further redacted to remove account numbers, are attached as Attachment “Q”.

7. I reviewed the expert report of Dr. Hendrik Bessembinder, dated April 25, 2013, for the case *CFTC v. Moncada* (“Bessembinder Report”).

8. Finally, I reviewed certain deposition exhibits from the deposition of Eric Moncada on July 2 and 3, 2013, for the case *CFTC v. Moncada* (“Moncada Deposition”). These deposition exhibits are attached as Attachments “R” to “AA”. All of these exhibits from the Moncada Deposition are excerpts from the messaging data generated by Advantage Futures LLC and produced to the Commission (the “FCM logs”). These excerpts were filtered to exclude messages (a) where the field “User ID” did not contain the value “EMONCADA”, and (b) where “Field 47” contained a value of “OrderSrc=Autospreader”; the excerpts include all other data in

the FCM logs from the time of the first line of data in the excerpt to the time of the last line of data in the excerpt.

## II. Review of Daily Statements

9. Below is a summary chart of the end of day margin equity (in US dollars) for the BES account, and the Serdika account.:

Date	BES Account	Serdika Account
Oct. 6	(\$583,543.68)	(\$320,234.51)
Oct. 12	(\$327,207.94)	\$87,702.23
Oct. 14	(\$297,076.35)	(\$40,590.98)
Oct. 19	(\$706,735.56)	\$458,805.11
Oct. 26	(\$1,082,191.99)	\$31,062.06
Oct. 27	(\$1,168,171.00)	(\$60,864.56)
Oct. 29	(\$697,095.63)	(\$454,618.42)
Oct. 30	(\$758,593.60)	(\$299,448.25)

10. The margin equity figures in the table above come from entries in the daily statements indicating whether the account has “excess equity” or “margin deficit”.

11. According to the daily account statements, the BES account was in margin deficit on all eight of the attempted manipulation dates. According to the daily account statement, the Serdika account was in margin deficit, reported in U.S. dollars, on five of the eight attempted manipulation dates.

## III. Review of Globex Trade Data

12. CME Group produced a number of spreadsheets containing audit trail data for all orders, modifications, cancelations and trades (collectively “transactions”) in the CBOT December 2009 Wheat Futures Contract market (the “Globex trade data”). The Globex trade data include fields showing the trader identification (“Tag 50”) and account number associated with a transaction. Advantage stated that Moncada’s Tag 50 was “EM4” for all transactions involving the BES and

Serdika accounts. I was able to identify Moncada's transactions by filtering the Globex trade data to show those transactions where the Tag 50 was "EM4." The following discussions of Moncada's transactions are derived from the Globex trade data.

13. The Globex trade data obtained from the CME contain a categorical variable, "Func\_Code", and populated with four codes: 1, 2, 3, and 105. Func\_code 1=new order; Func\_Code 2= modified; Func\_code 3=cancel; and, Func\_code 105=Trade. The Globex Trade data exhibits referenced in this affidavit, exclude Func\_code 2.

14. Moncada placed and canceled numerous orders in the Globex electronic trading platform for 200 lots or greater ("large-lot orders") of the CBOT December 2009 Wheat Futures Contract. Of the eight attempted manipulation dates, Moncada placed and canceled large-lot orders in the BES account on October 6, 12, 14, 19, 26, and 27, 2009. Also of the eight attempted manipulation dates, Moncada placed and canceled large-lot orders in the Serdika account on October 26, 27, 29, and 30, 2009.

*A. September 30, 2009*

15. On September 30, 2009, between 12:14:00 pm Central and 12:16:00 pm Central, Moncada placed and canceled the following three large-lot sell orders in the BES account:

<b>Time Entered</b>	<b>Time Canceled</b>	<b>Time in Market</b>	<b>Quantity</b>	<b>Lots Filled</b>
12:14:30.889	12:14:31.535	0.646 seconds	500	0
12:14:54.496	12:14:55.127	0.631 seconds	402	0
12:15:37.472	12:15:38.296	0.824 seconds	500	0

Globex trade data reflecting the transactions described in ¶ 15 are attached at Attachment "T".

*B. October 6, 2009*

16. On October 6, 2009, at 10:20:09.476 am, Moncada placed a buy order in the Serdika account for 80 lots at a price of 466 cents. At 10:20:10.943 am, approximately 1.5 seconds later, Moncada placed an offsetting sell order in the BES account for 80 lots also at a price of 466 cents. The entire BES sell order filled at the price of 466 cents within 0.001 seconds. The majority of the Serdika buy order, 58 lots, was filled at the price of 466 cents.

17. Globex trade data reflecting the transactions described in ¶ 16 are attached at Attachment “J”.

C. *October 12, 2009*

18. On October 12, 2009, at 11:27:56.161 am, Moncada placed a sell order in the BES account for 116 lots at a price of 483 ½ cents. At 11:27:57.793, approximately 1.6 seconds later, Moncada placed an offsetting buy order in the Serdika account for 116 lots at a price of 483 ½ cents. Both orders immediately filled at the price of 483 ½ cents.

19. Globex trade data reflecting the transactions described in ¶ 18 are attached at Attachment “K”.

D. *October 14, 2009*

20. On October 14, 2009, between 1:00:00.000 pm Central and market close at 1:15:00.000 pm Central, Moncada placed and immediately canceled 10 large-lot buy orders, totaling 4,410 lots, in the BES account. According to the daily statement for the BES account on October 14, 2009, the BES account ended the October 14 trading day with a long position of 198 lots.

21. Globex trade data reflecting the transactions described in ¶ 20 are attached at Attachment “L”.

*E. October 15, 2009*

22. On October 15, 2009, at 10:34:54.801 am, Moncada placed an order in the BES account to sell 271 lots at a price of 499 cents. At 10:34:55.516, approximately 0.7 seconds later, Moncada placed an offsetting buy order in the Serdika account for 271 lots at a price of 499 cents. Both orders were completely filled at a price of 499 cents.

23. Globex trade data reflecting the transactions described in ¶ 22 are attached at Attachment “M”.

*F. October 27, 2009*

24. Between 10:13:47.755 am Central and 10:54:30.917 am Central on October 27, 2009, Moncada placed 25 large-lot buy orders in the BES account, totaling 8,932 lots. Moncada also placed one large-lot sell order in the BES account for 402 lots during that 45 minute time frame. None of the 25 large-lot buy orders or one large-lot sell order resulted in any executed trades before Moncada canceled them. In the 45 minutes between 10:10:22.131 am Central and 10:54:30.917 am Central, Moncada bought 42 lots and sold 205 lots, meaning that Moncada had net sold 163 lots in that time frame.

25. Globex trade data reflecting the transactions described in ¶ 24 are attached at Attachment “N”.

26. Also on October 27, 2009, between 11:45:41 am and 11:55:45 am, Moncada placed and canceled (a) one large-lot *buy* order, followed by (b) one large-lot *sell* order, followed by (c) three large-lot *buy* orders, followed by (d) four large-lot *sell* orders, followed by (e) two large-lot *buy* orders. Only one of these large-lot orders resulted in any trading, and only for 8 lots.

27. Globex trade data reflecting the transactions described in ¶ 26 are attached at Attachment “O”.



*G. October 29, 2009*

28. On October 29, 2009, at 12:08:59.899, Moncada placed an order in the Serdika account to sell 154 lots at a price of 508 cents. At 12:09:17.266, approximately 17.3 seconds later, Moncada placed an offsetting buy order in the BES account for 154 lots at a price of 508  $\frac{1}{4}$  cents. Both orders were immediately and completely filled at a price of 508 cents. The offsetting trade on October 29 was the only transaction that Moncada made in the BES account on that day.

29. Globex trade data reflecting the transactions described in ¶ 28 are attached at Attachment “P”.

#### **IV. Review of Bank Records**

30. For purposes of this affidavit, I reviewed redacted bank records produced to the Commission by Moncada showing transfers between Moncada’s personal bank account and bank accounts held by Serdika and BES from October 1, 2008 to January 3, 2010 (the “bank record time period”). The following chart is a summary of all transactions identified in the bank records during the bank record time period. The bank records, further redacted to remove account numbers, are attached as Attachment “Q”

<b>Date</b>	<b>Debit</b>	<b>Credit</b>	<b>Entity</b>
10/10/08		\$280,000.00	Serdika
10/29/08		\$350,000.00	Serdika
3/3/09		\$12,371.46	BES
5/5/09		\$500,000.00	BES
5/12/09		\$1,065,860.41	Serdika
7/01/09	\$50,000.00		Unclear
10/09/09		\$100,000.00	BES
12/23/09	\$300,000.00		Serdika
<b>Total</b>	<b>\$350,000.00</b>	<b>\$2,308,231.87</b>	

## V. Review of Bessembinder Report

31. The Bessembinder Report contains a variety of statistics regarding Moncada's trading in the December 2009 Wheat Futures market. Two statistics presented in the Expert Report are (a) the total number of orders placed during regular trading hours from August 13, 2009 to November 30, 2009 (Bessembinder Report, Table 3); and (b) the total volume of those orders (Bessembinder Report, Table 2). The Bessembinder Report breaks down the total number of orders and total volume of orders based on whether they were placed by Moncada or other market participants, and whether the orders were for less than 200 lots ("small lot orders") or 200 lots or more ("large-lot orders"). Based on these data points, I calculated the total number of orders and total volume of those orders as follow:

Type of Order	Number of Orders	Volume of Orders
Small lot orders, not by Moncada	3,282,620	8,885,188
Large lot orders, not by Moncada	908	337,941
Small lot orders, by Moncada	25,010	167,721
Large-lot orders, by Moncada	2,351	989,205
<b>Total</b>	<b>3,310,889</b>	<b>10,380,055</b>

32. Based on the total number of orders entered into the December 2009 Wheat Futures market and the total volume of those orders, I calculate that the average size of an order placed for December 2009 Wheat Futures between August 13, 2009 and November 30, 2009 was approximately 3.14 lots.

33. Based on the total number of small-lot orders that Moncada placed in this time period (25,010 small-lot orders) and the total volume of those small-lot orders (167,721 lots), I calculate

that the average size of Moncada's small-lot orders for December 2009 Wheat Futures between August 13, 2009 and November 30, 2009 was approximately 6.71 lots.

**Review of Moncada Deposition Exhibits**

34. I reviewed exhibit 13 from the Moncada Deposition, attached as Attachment "R". Attachment "R" is an excerpt from the FCM log for the BES account for October 6, 2009 running from 10:01:03.025 am to 10:02:46.199 am. Attachment "R" shows that Moncada placed and canceled seven large-lot buy orders, and placed numerous small-lot sell orders, during this time period. Attachment "R" also shows that several lots of Moncada's small-lot sell orders were filled during this time period.

35. I reviewed exhibit 17 from the Moncada Deposition, attached as Attachment "S". Attachment "S" is an excerpt from the FCM log for the BES account for October 12, 2009 running from 9:41:24.147 am to 9:45:37.996 am. Attachment "S" shows that Moncada placed and canceled five large-lot buy orders, and placed numerous small-lot sell orders, during this time period. Attachment "S" also shows that several lots of Moncada's small-lot sell orders were filled during this time period.

36. I reviewed exhibit 12 from the Moncada Deposition, attached as Attachment "T". Attachment "T" is an excerpt from the FCM log for the BES account for October 14, 2009 running from 9:50:30.539 am to 9:54:26.700 am. Attachment "T" shows that Moncada placed and canceled eight large-lot buy orders, and placed numerous small-lot sell orders, during this time period. Attachment "T" also shows that several lots of Moncada's small-lot sell orders were filled during this time period.

37. I reviewed exhibit 16 from the Moncada Deposition, attached as Attachment "U". Attachment "U" is an excerpt from the FCM log for the BES account for October 19, 2009

running from 9:39:32.19.584 am to 9:32:36.865 am. Attachment "U" shows that Moncada placed and canceled three large-lot buy orders, and placed numerous small-lot sell orders, during this time period. Attachment "U" also shows that two lots of Moncada's small-lot sell orders were filled during this time period.

38. I reviewed exhibit 11 from the Moncada Deposition, attached as Attachment "V". Attachment "V" is an excerpt from the FCM log for the BES account for October 26, 2009 running from 10:09:37.956 am to 10:10:48.661 am. Attachment "V" shows that Moncada placed and canceled four large-lot buy orders, and placed numerous small-lot sell orders, during this time period. Attachment "V" also shows that several lots of Moncada's small-lot sell orders were filled during this time period.

39. I reviewed exhibit 14 from the Moncada Deposition, attached as Attachment "W". Attachment "W" is an excerpt from the FCM log for the Serdika account for October 26, 2009 running from 11:51:52.181 am to 11:54:48.949 am. Attachment "W" shows that Moncada placed and canceled two large-lot sell orders, and placed numerous small-lot buy orders, during this time period. Attachment "W" also shows that several lots of Moncada's small-lot buy orders were filled during this time period.

40. I reviewed exhibit 6 from the Moncada Deposition, attached as Attachment "X". Attachment "X" is an excerpt from the FCM log for the BES account for October 27, 2009 running from 9:36:00.163 am to 9:38:01.634 am. Attachment "X" shows that Moncada placed and canceled five large-lot sell orders, and placed numerous small-lot buy orders, during this time period. Attachment "X" also shows that several lots of Moncada's small-lot buy orders were filled during this time period.

41. I reviewed exhibit 15 from the Moncada Deposition, attached as Attachment "Y".

Attachment "Y" is an excerpt from the FCM log for the Serdika account for October 27, 2009 running from 1:02:28.318 pm to 1:13:00.751 pm. Attachment "Y" shows that Moncada placed and canceled two large-lot buy orders, and placed numerous small-lot sell orders, during this time period. Attachment "Y" also shows that several lots of Moncada's small-lot sell orders were filled during this time period.

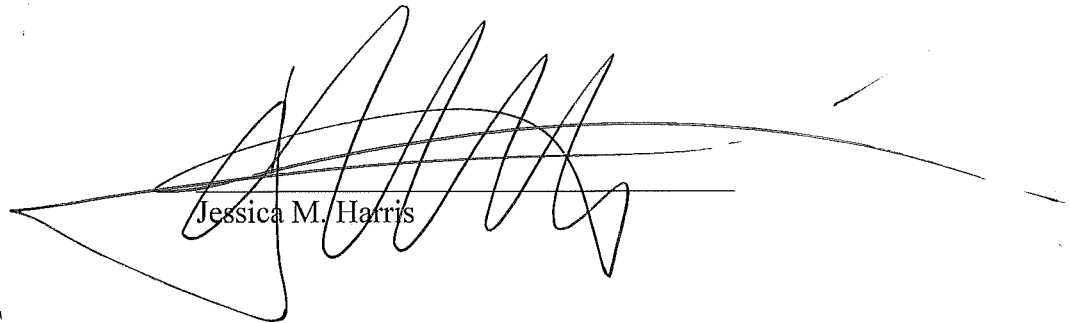
42. I reviewed exhibit 9 from the Moncada Deposition, attached as Attachment "Z".

Attachment "Z" is an excerpt from the FCM log for the Serdika account for October 29, 2009 running from 10:33:19.737 am to 10:39:30.961 am. Attachment "Z" shows that Moncada placed and canceled six large-lot buy orders, and placed numerous small-lot sell orders, during this time period. Attachment "Z" also shows that several lots of Moncada's small-lot sell orders were filled during this time period.

43. I reviewed exhibit 10 from the Moncada Deposition, attached as Attachment "AA".

Attachment "AA" is an excerpt from the FCM log for the Serdika account for October 30, 2009 running from 9:56:21.628 am to 9:57:24.973 am. Attachment "AA" shows that Moncada placed and canceled three large-lot buy orders, and placed numerous small-lot sell orders, during this time period. Attachment "AA" also shows that several lots of Moncada's small-lot sell orders were filled during this time period.

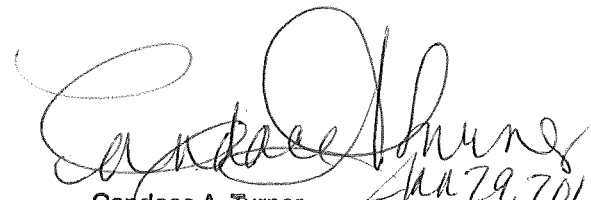
I solemnly affirm under the penalty of perjury that the contents of the foregoing are true to the best of my knowledge, information, and belief.

  
Jessica M. Harris

WASHINGTON, D.C.

NOTARIZED before me this 29<sup>th</sup> day of JANUARY

2014

  
Candace A. Turner  
Notary Public, District of Columbia  
My Commission Expires 7/31/2014